

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

STARBRIDGE ARTS, INC., a California  
corporation,

No. C 05-02483 WHA

Plaintiff,

**ORDER REMANDING CASE**

v.

CONNIE XU, an individual, SHUGUANG  
KANG, an individual, and DOES 1 through 10,

Defendants.

**INTRODUCTION**

In this action alleging conversion of property, the Court finds that there was no basis for removal under 28 U.S.C. 1441(b). Accordingly, this order **REMANDS** the action to state court.

**STATEMENT**

On May 10, 2005, plaintiff Starbridge Art, Inc. filed an action in state court alleging a single cause of action for conversion of property. Defendants' notice of removal was filed on June 17, 2005. After a preliminary review of the case file, an order was issued on July 5, 2005, asking defendants to show cause why the action should not be remanded by July 25, 2005. This order now addresses defendants' response, filed on July 22, 2005.

Starbridge Art, Inc. is "a closely-held corporation whose primary purpose is to organize and promote entertainment programs targeted at the Chinese-language population in the Bay Area" (Compl. ¶ 5). It organized a concert event called "Sing Along Song" held on January 23, 2005, which brought together a number of well-known Chinese-language music and media stars

(*id.* at ¶¶ 6, 10). Plaintiff alleges that defendant Xu volunteered to assist with plaintiff's online promotional efforts for this event (*id.* at ¶ 7). After the concert was over, Xu and her husband, defendant Kang, allegedly deleted various computer files associated with plaintiff's online ticket reservation system and indicated that these files would only be surrendered "following negotiation of a fee" (*id.* at ¶¶ 8, 10).

The notice of removal acknowledges that the complaint "asserts a single cause of action for conversion" (Notice of Removal ¶ 2). Defendants, however, allege that they are the rightful owners of the "custom-designed computer software program" in dispute (*id.* at ¶ 3). Defendant Kang further alleges that the software program he wrote is protected by federal copyright law (*id.* at ¶ 4). In short, defendants claim that plaintiff was only entitled to use the software program for a "temporary evaluation period;" after this period expired, the files were removed because plaintiff refused to pay a reasonable licensing fee (*id.* at ¶¶ 3–5).

At the same time they removed this action, defendants filed their own action in federal court, which was assigned Civil Docket No. 05-02495 WDB. Therein, defendant Xu asserts that she was plaintiff's employee, not a volunteer, and should have been compensated accordingly. The complaint alleges (1) failure to pay minimum wages in violation of FLSA § 206 and California Labor Code §§ 511 & 1197; (2) failure to pay overtime wages in violation of FLSA § 207 and California Labor Code § 1194; (3) breach of contract; and (4) quantum meruit. Defendant Kang further alleges that he is entitled to (5) value of goods sold and delivered and (6) declaratory relief regarding his ownership of a federally copyrighted work. By separate motion for administrative relief, defendants seek to have that action related to this one.

### ANALYSIS

Removal under 28 U.S.C. 1441(b) is permitted for actions involving a federal question over which the district court would have had original jurisdiction pursuant to 28 U.S.C. 1331. The removing party always bears the burden of establishing removal is proper. *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir. 1990). The removal statutes are strictly

1 construed such that any doubts are resolved in favor of remand. *Gaus v. Miles, Inc.*, 980 F.2d  
2 564, 566 (9th Cir. 1992).

3 The “well-pleaded complaint rule” provides that federal jurisdiction only exists when a  
4 federal question is presented on the face of plaintiff’s properly pleaded complaint, unaided by  
5 the answer or by the petition for removal. *Gully v. First Nat’l Bank in Meridian*, 299 U.S. 109,  
6 113 (1936)(further noting that the federal issue must not be “merely a possible or conjectural  
7 one”). This rule thus enables the plaintiff, as “master of the complaint” to have his action heard  
8 in state court “by eschewing claims based on federal law.” *Caterpillar Inc. v. Williams*, 482  
9 U.S. 385, 399 (1987).

10 Here, defendants openly acknowledge that no federal issue was presented on the face of  
11 plaintiff’s complaint. Instead, they argue that their counterclaims (as well as their own  
12 subsequently-filed lawsuit) raise federal issues. A federal *defense*, however, even if anticipated,  
13 is not part of a plaintiff’s cause of action. *Rivet v. Regions Bank*, 522 U.S. 470, 475 (1998).  
14 This order therefore finds that defendants have not met their burden of demonstrating that  
15 removal was proper, particularly as any doubt should be resolved in favor of remand.

#### 16 CONCLUSION

17 For the reason stated above, this action is immediately **REMANDED** to the Superior Court  
18 of California for the County of Alameda.

19  
20 **IT IS SO ORDERED.**

21  
22 Dated: August 1, 2005



23 WILLIAM ALSUP  
24 UNITED STATES DISTRICT JUDGE  
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